



7020-02

## INTERNATIONAL TRADE COMMISSION

### Certain Network Devices, Related Software and Components Thereof (II)

#### [Investigation No. 337-TA-945 (Modification Proceeding)]

#### Institution of Modification Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 27, 2015, based on a Complaint filed by Cisco Systems, Inc. of San Jose, California ("Cisco"). 80 FR 4313-14 (Jan. 27, 2015). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), by reason of infringement of certain claims of U.S. Patent Nos. 7,023,853 ("the '853 patent"); 6,377,577 ("the '577 patent"); 7,460,492 ("the '492 patent"); 7,061,875 ("the '875 patent"); 7,224,668 ("the '668

patent”); and 8,051,211 (“the ’211 patent”). The Complaint further alleges the existence of a domestic industry. The Commission’s Notice of Investigation named Arista Networks, Inc. of Santa Clara, California (“Arista”) as the respondent. The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. The Commission terminated the investigation in part as to certain claims of the asserted patents. Notice (Nov. 18, 2015) (see Order No. 38 (Oct. 27, 2015)); Notice (Dec. 1, 2015) (see Order No. 47 (Nov. 9, 2015)).

On May 4, 2017, the Commission found a violation of section 337 with respect to certain of the asserted claims of the ’577 and ’668 patents. Notice (May 4, 2017); 82 FR 21827-29 (May 10, 2017); *see also* Notice of Correction (May 30, 2017); 82 FR 25811 (June 5, 2017). The Commission issued a limited exclusion order (“LEO”) and a cease and desist order (“CDO”) against Arista. *Id.* The Commission did not find a violation with respect to the ’853, ’875, ’492, and ’211 patents. *Id.*

On June 30, 2017, Cisco filed a notice of appeal with the United States Court of Appeals for the Federal Circuit (“Federal Circuit”), seeking review of the Commission’s finding of no violation. *Cisco Sys., Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2289. On July 21, 2017, Arista filed a notice of appeal with the Federal Circuit, seeking review of the Commission’s finding of violation. *Arista Networks, Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2336. On August 3, 2017, the Federal Circuit consolidated the Arista and Cisco appeals. *Cisco Sys., Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2289, Dkt. No. 20. The consolidated appeal is currently pending before the Federal Circuit.

On August 25, 2017, Arista filed a motion with the Federal Circuit seeking to stay the Commission’s remedial orders pending resolution of the appeal on the merits. On September 22, 2017, the Federal Circuit denied this request “subject to the condition that the product redesign

on which Cisco relies to deny irreparable harm must be permitted to enter the country, without being blocked by the Commission order under review in this case, unless and until Commission proceedings are initiated and completed to produce an enforceable determination that such a redesign is barred by the order here under review or by a new or amended order.” *Cisco Sys, Inc. v. ITC; Arista Networks, Inc. v. ITC*, Appeal Nos. 2017-2289, -2351, Order at 3 (Fed. Cir. Sept. 22, 2017).

On September 27, 2017, Cisco petitioned for a modification proceeding to determine whether Arista’s redesigned switches infringe the patent claims that are the subject of the LEO and CDO issued in this investigation and for modification of the remedial orders to specify the status of these redesigned products. On October 10, 2017, Arista filed its opposition to Cisco’s petition. On October 17, 2017, Cisco filed a Motion for Leave to Submit a Reply in Support of Its Petition for a Modification Proceeding. The Commission grants Cisco’s motion to file a reply.

The Commission has determined that the request complies with the requirements for institution of a modification proceeding under Commission Rule 210.76. Accordingly, the Commission has determined to institute a modification proceeding and has delegated the proceeding to the Chief Administrative Law Judge to designate a presiding Administrative Law Judge. Cisco, Arista, and OUII are named as parties to the proceeding.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 27, 2017.

Lisa R. Barton,  
Secretary to the Commission.

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